Supreme Court, U.S.
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No._____

In The

Supreme Court of the United States

♦

O'RANE M. CORNISH, SR.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

♦

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

♦

PETITION FOR A WRIT OF CERTIORARI

♦

O'Rane M. Cornish, SR.
Petitioner
Represents Himself
P. O. Box 5000
Oakdale, LA 71463-5000.

March 3, 2006

QUESTIONS PRESENTED

QUESTION 1:

Whether the unavailable 'municipal building permitting' documentary evidence, the only recognized objective, positive proof within the local municipality, of: (**a**) The construction and existence of any building; and (**b**) The existence of building construction projects; both pivotal, dispositive issues in this case, qualifies under the aegis of Rule 33 Newly Discovered evidence, given the uniquely peculiar, distinguishing circumstances and fact pattern of the Case.

QUESTION 2:

Whether as to the same case and same issue; (**a**) The District Court's Order overruling the previous decision of the Appellate Court, followed by, (**b**) The Appellate Court's decision affirming the District Court's Order; constitute violations of the settled doctrines of: (**1**) "The Law of the Case"; (**2**) "The Law of the Circuit"; (**3**) "The Mandate Rules"; and longstanding concepts of precedent; and so raises questions of reasonableness and fairness in general, and on the whole, evidences a violation of the Due Process Clause of the U.S. Constitution.

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There are two opinions of the United States Court of Appeals, and one decision of the United States District Court, whose publication status are unknown. The first, an Interlocutory Order of the USCA 6th Circuit, in Case 01-6132, filed September 27, 2001 (App. 5). The Court at Footnote 2 of the Order states, "Because these records were allegedly not available to him at trial and thus were not entered into evidence they would seem to be more applicable to a Motion for a New Trial based on newly discovered evidence under Rule 33, Fed. R. Crim. P...". By this ruling, the Court expressly and impliedly decided the status of the documents at issue as newly discovered evidence.

The second, is the third opinion of the United States Court of Appeals entered November 3, 2005, in which it affirmed the District Court's denial of the Rule 33 Motion II, (App. 7), in which the District Court effectively overruled the Appellate Court's September 27, 2001 [its previous] ruling. See Case No. 04-5869 (6th Cir. November 3, 2005).

The third, is the Order of the United States District Court of July 2004, (Appendix B), in which it denied the Rule 33 Motion II, even as it ruled that in the Court's opinion, the evidence filed by Cornish with the Motion is "newly available". This District Court decision, as noted, overrules the 6th Circuit's 9/27/01 ruling.

JURISDICTION

After the U.S. District Court denied the R-33 Motion II, Cornish timely filed Notice of Appeal to the U. S. Court of Appeals, Sixth Circuit. The Judgement of the Sixth Circuit was entered November 3, 2005. No petition for Rehearing was filed, Cornish's best efforts at same notwithstanding. The Jurisdiction of this Court is invoked pursuant to 28 USCA § 1254(1). A single Justice of this Court, by Letter Order dated February 10, 2006, in response to Cornish's timely Motion to extend time, extended the time to file his Writ for Certiorari, to March 3, 2006.

STATUTORY PROVISIONS

The following Federal Statutes and Rules are involved in this case:

U.S. Const. Amd. V, Due Process Clause, provides in relevant part: "No person shall be deprived of Life, liberty, or property without due process of law....;"

The Due Process Clause requires actions of government to occur through ordered and regularized process. The first of which is procedural due process.

STATEMENT OF THE CASE

PRELIMINARY STATEMENT

The issue is whether the Rule 33, Fed. R. Crim. P. "Newly Discovered Evidence" stricture, is so absolute, that when confronted with a real world [documentary] circumstances of, in this instance, "municipal building permitting documents", specific to the two pivotal 'project addresses' in issue; which documents are ruled "newly available"; are "material" and "exculpatory" as to the pivotal "misrepresentation" and "false information" charges; that such 'tangible' documentary evidence cannot be seen as distinguished from the usual 'abstract' co-defendant-who-didn't-testify-at-trial-but-who-wants-to-testify-after-conviction type of evidence, and be accommodated under the 'newly discovered evidence' R-33 umbrella, as a basis for a new trial?

The pivotal issue element in this case, is the construction and existence of a building at a time and place as Cornish represented to Rosen/PFS; and the existence of the Alcor, Inc., 4730 Tchulahoma building construction project listed on the bank form.

The Municipal Building Permitting documents are unique because all building construction in the United States, are locally regulated and controlled, by the local municipality, through promulgated Ordinances, enforced by, in this instance, a local Agency designated as Construction Code Enforcement "CCE". This Agency's contemporaneous 'building permitting' documents, with their contemporaneously made notations, are, in the local City and County, the only objective positive proof/evidence, of the construction and existence of any building; and the existence of any 'building construction project'. The documents are to buildings and construction projects what a birth certificate is to the birth of a human being; or a death certificate to the death of a human being. They are conclusive.

Once again, do such documents, not available at trial, but located thereafter and filed with the Court, not afford dramatic distinctions between "tangible" municipal documentary evidence, whose substance although known at trial, the documents themselves hold such a traditional, legal and definitive role as to the construction and existence of buildings in local municipalities, such that they are

indispensable? Indeed, tax assessments on properties in municipalities are dependent on them [building permitting documents] as conclusive proof of construction and existence of buildings and construction projects; and "abstract" testimony of a convicted defendant as to his co-defendant? The rather peculiar circumstances exhibited all around, suggest that they ought to come under the R-33 umbrella. The District Court ruled the "fact pattern of the case is somewhat unique".

PECULIAR CIRCUMSTANCES — UNIQUE FACT PATTERN: A Sampler

Cornish was prosecuted in the U.S. District Court, Western District of Tennessee, for violation of 18 USCA § 1343 Wire Fraud — (Ct. 1) — misrepresentation of the construction and existence of a lite commercial building; 18 USCA § 1957 (Cts. 2-8) — money laundering [disbursement of the proceeds of Ct. 1]; 18 USCA § 1014 — false information (Ct. 9) — that listing of the "Alcor, Inc. building construction project" on the form to the FDIC insured bank was false, since, as they put it, "it never existed"; and 18 USCA § 1344 — bank fraud (Ct. 10) — deposit of the check retrieved from one of his company's mailboxes into one of his company's payroll accounts.

He went to trial without his corroborating business records and documents. But, the Court was noticed several times, of his missing business records and documents — prior to, during and after trial.

THE 4791-7 TCHULAHOMA BUILDING AT ISSUE:

Cornish, as the contractor, took the witness stand and testified as to what he did: that he obtained the proper Zoning permits, pulled the appropriate 'building permitting' documents, and that thereafter he undertook construction of the 4791-7 Tchulahoma building represented to Rosen/PFS.

THE "ALCOR, INC. 4730 TCHULAHOMA BUILDING PROJECT " AT ISSUE:

Cornish, as the contractor, also testified that he pulled the necessary 'building permitting' documents for the "Alcor, Inc., 4730 Tchulahoma Building Construction project" at issue, as listed on the form to the FDIC insured bank.

POISON PIT IN THE MIDST — WELL INTENTIONED PROJECT MADE BAD:

Cornish also testified, that the belated discovery of the "Poison Pit", an abandoned 'Superfund Hazardous Waste Disposal Site' in the same southwest quadrant of Shelby Drive and Tchulahoma Road as the 4791-7 Tchulahoma

building at issue, turned a good and well intentioned transaction bad.

EYEWITNESSES TO THE CONSTRUCTION OF THE BUILDING AT ISSUE:

Three eyewitnesses to the 4791-7 Tchulahoma building's construction testified for the defense: Leavette Robinson who testified that he lived across the street from the site of construction and that he saw from his backyard, Cornish's construction of the building, day to day, from start to finish, and that he visited and inspected it up close and personal after completion; Antonio Robinson (no relation to Leavette Robinson), testified that he too saw Cornish construct the building at Tchulahoma Road, that he visited the building, that it was well built with fine materials. And Mrs. Cornish, deceased spouse of Petitioner Cornish, who testified that she "saw Cornish place a brand new building on the empty lot, next to the church on Tchulahoma Road".

Cornish was convicted in the absence of the 'building permitting' documents displayed at Appendix C, and he was sentenced to a long term of imprisonment on 8/31/01.

RULE 33 MOTIONS FOR NEW TRIAL ARE FILED:

Cornish filed two Rule 33 Motions for New Trial. The first, Motion I, was premature, because it was filed prior to the belated discovery and retrieval of the seven boxes of documents and records at the home of deceased civil counsel's son in Nashville. During the pendency of Motion I, and the sentencing hearing, Cornish, at then place of confinement, received the seven boxes of documents from Nashville, Tennessee. Place of confinement denied his request to copy the documents so he could file a supplement. The Motion I was denied 8/31/01. In his Motion to Reconsider, he described the saga of the boxes and documents found in Nashville, and the place of confinement's denial of his request to copy. That Motion was denied. He then filed a timely appeal to the USCA, 6th Circuit, and simultaneously motioned the District Court for Stay of Execution of Sentence pending appeal, or Alternatively for an Order to Stay Transfer to another place of confinement pending his appeal. The motion was denied and Cornish appealed (an interlocutory) to the USCA, 6th Circuit.

The 6th Circuit Affirmed the decision. In so doing, it took note of the seven boxes of documents. It expressly or impliedly, placed them under the R-33 umbrella when it ruled:

> **"...They would seem to be more applicable to a motion for a new trial, based on newly discovered evidence under Rule 33, Fed. R. Crim. P..."**
>
> See Case 01-6132 (6th Cir. Sept. 27,2001).

This first appellate Ruling vis-a-vis the boxes of documents, placed them under the Rule 33 Newly Discovered Evidence. Cornish was promptly transferred without the boxes of documents to FCI-Texarkana, Texas. He was never again allowed to see the boxes of documents until 2003 when he was, by stroke of luck, transferred to the Desoto County Detention Center in Mississippi, May 10, 2003. The Sheriff promptly allowed delivery of the boxes.

RULE 33 MOTION II IS FILED:

With access to the seven boxes restored, he was allowed to copy the documents and he timely filed the second R-33 Motion II, on 9/3/03 with the copies. He also filed an Affidavit in Support, also with documents; an Amendment also with documents; and a Memorandum in Support of the Motion also with more documents. The District Court with a "successor" Judge presiding, denied the Motion II, ruling the evidence filed with the Motion "newly available", which precludes the grant of a New Trial. This

ruling (Appendix B) overruled the appellate Court's previous ruling (App. 5) of September 27, 2001.

UNIQUE DOCUMENTS — PECULIAR CIRCUMSTANCES:

Among the documents filed with the Motion II, are those displayed as follows and which appear at Appendix C hereto:

Fig. 1.3 Document Serial No: 737676
PROJECT STREET ADDRESS:
4791-7 Tchulahoma, Memphis
OWNER/TENANT: Mfg
(Manufacturing) Technologies

Fig. 1.2 Document Serial No. 737678
PROJECT STREET ADDRESS:
4791 Tchulahoma, Memphis

Fig. 1.1 Document Serial No: 737678
PROJECT STREET ADDRESS:
4791 Tchulahoma, Memphis

The foregoing three building permitting documents are material and exculpatory to the construction and existence of the 4791-7 Tchulahoma building at issue. They are "CCE" documents and were not available at trial.

Fig. 1.5 Document Serial No: 725310
PROJECT STREET ADDRESS:
4730 Tchulahoma, Memphis
OWNER/TENANT: Alcor, Inc.

Fig. 1.4 Document Serial No: 725310
PROJECT STREET ADDRESS:
4730 Tchulahoma, Memphis.

Exhibit #6 Document Serial No: 725310 —
Code Enforcement Inspection Report Card for Project 725310 at
PROJECT STREET ADDRESS:
4730 Tchulahoma, Memphis.

The foregoing three building permitting documents are material and exculpatory as to the existence of the "Alcor, Inc., 4730 Tchulahoma Road building construction project" listed on the bank form, and said to be a false listing. They are "CCE" documents and were not available at trial.

SECOND SET OF DOCUMENTS:

Fig. 2.1 Document Serial No: B0737688
PROJECT STREET ADDRESS:
3737 S Mendenhall, Memphis
OWNER/TENANT: Chitlin-N-Thangs

Fig. 2.2 Document: Envelope in which Code Enforcement sent the Certificate of Completion to Cornish after project completion and final inspection.

Fig. 2.3 Document Serial No: B0737688
'Certificate of Occupancy'
For PREMISES KNOWN AS:
3737 S Mendenhall
TENANT/OCCUPANT:
Chitlin-N-Thangs
CONTRACTOR: Six C Dahcor Industries, Inc.

The foregoing three documents are material to the issue of Cornish's company's capacity to pull commercial permits and to complete such projects. These are material and exculpatory as to the restaurant Cornish completed, which Austin said never was. They are "CCE" documents and were not available at trial.

THE " BUSINESS OFFICE " DOCUMENTS:

Fig. 3.1 Document Serial No: 725309
PROJECT STREET ADDRESS:
3383 Park Ave., Memphis
OWNER/TENANT: PCD

Fig. 3.2 Document Serial No: B0725309
PROJECT STREET ADDRESS:
3383 Park Ave., Memphis
OWNER/TENANT: PCD

Fig. 3.3 Document Serial No: 0725309 –
Letter Document from George Jett & Associates, Consulting Engineers dated July **12,** 1993;
ADDRESSED TO: Chief Building Inspector [CCE]
RE: Permit #00725309, 3383 Park Avenue
SUBJECT/ACTION: Certify to the Chief Building Inspector, Construction Code Enforcement, that the second floor Framing complied with the structural Integrity standards reflected in the drawings and the Standard Building Code. It is signed by George B. Jett, Professional Engineer, Tennessee #1476.

Fig. 3.4 Document Serial No: B072545

'Certificate of Occupancy'

For PREMISES KNOWN AS:

3383 Park Avenue, Memphis

TENANT/OCCUPANT: Personal & Career Development

OWNER: PCD

CONTRACTOR: Six C Dahcor Industries, Inc.

The foregoing four documents are material to the issue of Cornish's company's capacity to pull commercial permits and to complete such projects. These are material and exculpatory as to the business (commercial) permits Cornish pulled and completed, which Austin testified for the prosecution, "he was never allowed to complete". They are "CCE" documents and were not available at trial.

THE DEMISE OF THE BUILDING AT ISSUE:

Cornish testified in explanation, that the belated discovery of the "Poison Pit" in the same quadrant as the 4791-7 Tchulahoma building at issue, turned the good and well intentioned project and transaction bad. The following State documents were not available to him at trial:

Fig. 4.1 Document cover page case titled:
Commissioner's Order,
Case No: 91-3359.

Fig. 4.2 Page excerpt from the
Commissioner's Order describing
and identifying the specific
contaminants of the "Poison Pit".

Fig. 4.3 Letter Document from the General
Counsel, State of Tennessee,
Department of Environment and
Conservation [TDEC], informing in
the last line of the letter that,
"it was not filed in any Court".

Of the foregoing three documents, the first two are excerpted from the "TDEC", "Commissioner's Order" filed with his Motion II. The documents are material to the issue of Cornish's explanation as to the environmental impairment which destroyed the project's transaction's viability. No one wants to be living and/or working in close proximity to a "Poison Pit". All documents above are at Appendix C.

OTHER BUSINESS DOCUMENTS WERE ALSO FILED:

A series of other additional business documents filed with his Motion II, contradicts, impeaches and discredits the other prosecution witnesses. See as examples, Figs. 6, 7, 8, 9, 10, 11 at Appendix C. None of the witnesses the prosecution presented, ever visited and saw the building at issue — not even the FBI Agents. Indeed, one FBI Agent testified that "he wouldn't set foot on that property!".

REASONS FOR GRANTING THE PETITION FOR CERTIORARI

1. INCONSISTENCY OF DECISION WITH PRIOR RULING OF APPELLATE COURT:

The decision of the District Court with respect to the Motion II is inconsistent with and contradicts the previous ruling of the Appellate Court filed September 27, 2001, in the same case (01-6132) and on the same issue. The inconsistency is direct and readily apparent. The Appellate Court ruled:

> **"Because the records were allegedly not available to him at trial and thus were not entered into evidence, they would seem to be more applicable to a motion for a New Trial based on 'Newly Discovered' evidence under Rule 33, Fed. R. Crim. P."**
> *USA v. CORNISH,* Case 01:6132 (9/27/01).

In its Denial Order of July 2004, the District Court ruled that the documents filed with his Motion II did not come under Rule 33 Newly Discovered evidence, but rather, were "Newly Available."

The U.S. Court of Appeals, Sixth Circuit, on 11/3/05, affirmed the decision of the District Court, and in so doing, condones or sanctions the District Court's overruling of its (USCA) previous 9/27/01 ruling. This runs afoul of two well-settled doctrines, "The Law of the Case" and the "Law of the Circuit", and ultimately, the concept of 'Precedent'. Review by this Court is necessary to restore the normal and usual order and functioning of the Courts.

2. SUBJECT MATTER OF SPECIAL INTEREST:

In municipalities across the United States, 'building construction' and construction 'building projects', are locally regulated via local laws called City/County Ordinances. The Ordinances are enforced by local police Agencies designated "Construction Code Enforcement" (CCE). They carry out their Code Enforcement duties via a series of received,

issued and archived documents and reports. Their contemporaneous documents and reports with their contemporaneously made notations are the only objective proof of a building's construction and existence in any municipality. They are relied on as a basis for local property tax assessments [that is to say, word of mouth that a building was constructed, is never accepted as a basis that a building has been constructed and in existence]. The documents are proof of what they state. This Court so ruled in the case of *USA v. McCOY,* 193 US 543, 24 S.Ct. 528, 48 L.Ed. 805., that:

> **"Official Reports and Certificates made contemporaneously with facts stated and in the regular course of official duty by an officer having personal knowledge of them, are admissible for the purpose of proving such facts".**

The municipal building permitting documents at issue in this case, falls under this well-settled ruling of this Supreme Court. Both of the lower Courts appear to have simply closed their eyes to the 'municipal building documents' presence, significance, nature and character vis-a-vis the charges against Cornish. The documents are pivotal, but are ignored. Indeed, not even mentioned except that the District Judge recited prosecution witness Austin of CCE that, "no one can undertake building the building at issue in the City and County, unless with building permitting documents through her". Those are the very building permitting documents that could not be located pre and for trial; discovered in Nashville after trial, retrieved

and filed with his Motion II, are declared "newly available" and thereafter simply ignored. See Appendix C, Fig. 1. And yet, they are the only objective, positive proof of the construction and existence of buildings, and the existence of building projects, not only in Memphis, but in municipalities all across the country.

Failing to recognize these documents accordingly, sets the type of precedent which bodes ill for municipalities, contractors, financial institutions, taxing authorities, mortgage companies, title and a host of other insurance companies, all of whom rely on the 'building permitting documents' traditional, historical and legal role, as the only objective, definitive proof of a building's construction and existence, and the existence of building construction projects. To now ignore them as to issues of building construction and project existence, is a precedent which would undermine an important industry and economic activity. Review by this Court is required to resolve the issues and preserve the status of local building permitting documents so far ignored. The potential impact from the precedential point of view, is much too significant for this Court to ignore.

3. RULING NOT JUST UNFAIR, BUT MANIFESTLY ERRONEOUS:

The ruling of the lower Courts ignoring the municipal building permitting documents, appears as not only unfair, but manifestly erroneous. The lower Courts' failure to consider the group of municipal building permitting documents so pivotal to element issues of this case is not just wrong but especially wrong. Consider: the prosecution presented only a single expert authority witness, Doris Lee Austin, Deputy Administrator, Memphis & Shelby County Office of Construction Code Enforcement, "CCE", who testified that these documents didn't exist [she had none, as she put it to the FBI Agent Burns], and that "she checked her records and found none". But, Fig. 1 at Appendix C shows the documents existed after all, issued by her very own office, even reflect mishandling by her office, since the 38118 zip code given was incorrectly encoded into her computer system as a 38116 zip.

These municipal building permitting documents are the product of the exercise of the legitimate police powers of local municipalities. **(1)** They are the only objective proof/evidence of the construction of any building within the municipality. **(2)** They are the only objective proof of the existence of building construction projects in the municipality. **(3)** They are the documents relied on by the property tax assessment authorities in the municipality to levy taxes. **(4)** They are the documents relied on to make

mortgage and insurance decisions. They stand as proof of what they state. The presumption must and is with them. Now, considering all that, it cannot be fair to simply ignore them [the documents] when filed with the Court, and the issue is whether or not a building was constructed in the municipality; and whether a building construction project existed. The documents are proof of those issues. Such is the role they play. Ignoring them as the lower Courts have done can only be wrong, and especially wrong; and calls for review by this Court.

3(a). SOLDIERS' RIGHTS, WHILE ON DUTY, MUST BE PROTECTED ON THE HOME FRONT

The manner in which these documents became not available to begin with, raises fairness issues then and now. Cornish, 27½ years a member of the United States Air Force, had to depart for a period of military duty in 1995. The civil lawsuit filed in the Chancery Court by the complainants and key prosecution witnesses in this case, was in progress. The issues in that case are the same as this case. While away on military duty, the Chancery Judge demanded these documents among several, and indeed had counsel contact Cornish's military unit regarding the matter. Cornish, following consultation with the Judge Advocate's office, invoking applicable provisions of the Soldier's and Sailor's Civil Relief Act of 1940 as Amded., petitioned the USDC for an Order directed to the Chancery Court to stay further action in that case until Cornish's release from his

tour of military duty. The Court denied the petition. The Chancellor ordered counsel to produce the documents. He then visited Cornish's office, and took all documents (7 boxes) leaving no copies. The civil suit was resolved. Counsel died before return of the documents.[1]

Five years later when Cornish was indicted in the case at bar, he had no idea as to the location of the boxes of documents. As it has turned out, the U.S. District Judge who denied the Petition pursuant to the Soldier's and Sailor's Civil Relief Act, resulting in the documents being taken in Cornish's absence for military duty, is this case's original trial judge. Rather ironic, but consider how things might have turned out had the petition been granted, Cornish returned home, and copied the documents in an orderly fashion and delivered them to his now deceased counsel. He would have had copies for trial, and with copies, the existence of the building, project and permitting documents, could not have been denied. The current matters thus started out unfairly, and degenerated into what is now before this Court, as especially wrong. A soldier's affairs are to be protected by the organs of the society whose business he is placed on military duty to faithfully undertake. That soldier, must now be allowed to correct the resulting miscarriage visited upon him, as a result.

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1. See Cornish v. Allisandratos, 96cv02177 (USDC March 1996), wherein Cornish invoked the Soldier's and Sailor's Civil Relief Act to stay proceedings until his release from his military duty. The Court denied. The documents were taken and he left without even copies. His attorney dies before there return, and as it developed, the son moved them to Nashville.

Consider: the documents ignored speaks rather loudly for themselves with respect to the contents they state therein. They are the only possibility or means to challenge the veracity and factual accuracy of the prosecution's lone expert authority and most damaging witness, Austin. One of the peculiar, if not unique features of the documents (App. C, Figs. 1, 2, 3, Exhibit #6), is that they are Austin's CCE agency's very own documents.

Austin testified (says) one thing, but 'her' documents say something which is the complete opposite of what she both informed the FBI Agent Burns, and testified to at trial. She said, the building could not and did not exist, because she had no building permitting documents, and that in the City and County, no one can build such a building except with these very documents from her. The documents contradict to the very core of what she testified, which just also happens to be the very premise and theory of the prosecution's case — indeed, the very heart of it. To now have the documents, and then simply ignore them and their impact on the case, appears wrong — very wrong, unfair, and manifestly erroneous. Without Austin, there is no evidence to support the prosecution's case against Cornish — indeed to support the conviction. More reason that it is manifestly erroneous for the courts to ignore them. The foregoing constitutes reasons for this Court to grant review.

CONCLUSION

Rule 33 — Newly Discovered Evidence, appears silent as to "newly available" evidence. As the Contractor, Cornish had to take to the witness stand to testify as to the substance of the municipal building permitting documents he pulled in the process of undertaking the construction of the building; and the building construction project. The documents are unique. They speak for themselves. No one can purport to speak for them. Rule-33's absolute stricture needs review and refinement to accommodate the unique documentary circumstances of this case. The Court should therefore grant review.

The inconsistency and conflict are readily apparent and direct. The September 27, 2001, previous ruling of the Appellate Court is overruled by the District Court; and what's more, the Appellate Court effectively affirmed that action of the District Court; all in contravention of "precedent," the "law of the case," and the "law of the circuit"; all of which dictates that this Court should grant review.

The Subject matter of this case as related to the central issue, the "municipal building permitting" documents, is of special interest; for if they can be ignored under these circumstances of the very issues and subjects that fall squarely within their domain exclusively [proof of the construction and existence of building, and existence of building construction projects], then, for example, taxing

authorities, and the multi-trillion-dollar mortgage market and industry could not be expected to rely on these documents anymore. That would be quite a disruption for the orderly conduct of economic activity across the United States. Property existence is inextricably linked and intertwined with property rights. This cries out for this Court's review.

Lastly, the rulings of the lower Courts are wholly unfair and manifestly erroneous given the documents involved, what they mean and do in the local communities, how they came to be lost to begin with, and their impact on a case in which the prosecution did not present any overwhelming evidence, indeed only a single authority witness. Review by this Court is demanded under the circumstances, magnitude, and consequences of the unfairness and manifest erroneousness readily evident.

Finally, in denying the R-33 Motion II, the District Court relied on a categorical absolute 'ban' on co-defendant's testimony, which was unavailable at trial, because the individual asserted his 5th Amendment rights. He supported his ruling with all cases of such circumstances. A survey of other Circuits' treatment of the R-33 issue, shows the majority regard the 'ban' on 'newly available' evidence — defined only in terms of unavailable co-defendant's testimony — as a kind of "straightforward bright-line" rule, which is anchored, as they all put it," in the plain meaning of Rule 33". But it appears that Rule 33 has not always been so strict or absolute, such that it precludes the "rare",

"peculiar" circumstances involving 'documentary evidence,' such as the instant circumstances which involve the rather unique, peculiar "municipal building permitting" documents.

Two cases in the 5th Circuit, *Newsom v. United States,* 311 F.2d 74,75 (5th Cir. 1962); and *Ledet v. United States,* 297 F.2d 737, 738 (5th Cir. 1962); appear as the rare exception, suggesting that Rule 33 has not always been so strict and absolute. The Court in both cases, attributed their rulings to the "peculiar circumstances" of the respective case. Both cases are dated 1962. The instant case, it is submitted, is another such rarity, given the unique municipal building permitting documents involved and the peculiar circumstances reflected. But this is 2006. This Court is requested to grant review.

Respectfully submitted,

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APPENDIX A

9/24

The motion to stay execution presented to this senior judge is denied without prejudice. This file is sent forth with the the (sic) Court of Appeals in Cincinnati for consideration by an emergency motions panel.

/S/ Harry W. Wellford
HARRY W. WELLFORD
SENIOR CIRCUIT JUDGE

App. 2

Case. No. 01-6132

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ORDER

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

O'RANE M. CORNISH, SR.

Defendant - Appellant

BEFORE: HARRY W. WELLFORD, SENIOR CIRCUIT JUDGE.

Upon consideration of the pro se appellant's motion for a stay of execution of his sentence or in the alternative for an order requiring that the appellant not be transferred from his current place of confinement,

It is ORDERED that the motion be and it hereby is DENIED without prejudice.

ENTERED BY ORDER OF THE COURT

/S/Leonard Green
Leonard Green,Clerk

App. 3

01-6132

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	ORDER
	)	
O'RANE M. CORNISH, SR.,	)	
	)	
Defendant-Appellant.	)	

Following a jury trial, the defendant was convicted and sentenced on charges of wire fraud, engaging in monetary transactions in property derived from unlawful activity, bank fraud, and making false statements on a loan application. He has appealed that conviction to this court. He has also filed a *pro se* motion seeking either an order staying execution of his sentence pending appeal or, in the alternative, an order directing that he be detained at his present place of incarceration (the West Tennessee Detention Center in Mason, Tennessee) pending completion of his appeal.[1]

---

1. The district court denied a motion to stay transfer in an order entered on September 12, 2001. The basis for that denial was the court's observation that it had "no authority to make decisions concerning his place of incarceration."

The defendant originally presented his motion to a Senior Judge of this court who referred it to the clerk in Cincinnati for assignment to the court as an emergency matter. Because the defendant believes his transfer to another facility is imminent, the motion has been referred to a single active judge of the court for expedited consideration. *See* Rule 27(c), Fed. R. App. P.

To establish entitlement to release pending appeal, a person found guilty of an offense and sentenced to a term of imprisonment must show 1) by clear and convincing evidence, that he is not likely to flee or pose a danger to the safety of another person or the community, and 2) that the appeal is not for delay and raises a substantial question of law or fact likely to result in reversal, an order for new trial, a sentence that does not include a term of imprisonment, or a sentence reduced to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process. 18 U.S.C. § 3143(b); *United States v. Pollard,* 778 F.2d 1177, 1181 (6th Cir. 1985). This statute creates a presumption against release pending appeal. *United States* v. *Vance,* 851 F.2d 166, 168-69 (6th Cir.), *cert. denied,* 488 U.S. 893 (1988).

The defendant's motion does not address any of the above considerations. He does not, for example, state what issues he seeks to raise on appeal. He does assert that he has received business records which were unavailable to him at trial, but he does not indicate how such records relate to the specific charges for which he was convicted or how they would help in his appeal.[2] In the alternative, the defendant seeks an order which would prevent prison authorities from transferring him to another facility. Under 18 U.S.C. § 3621(b), however, the Bureau of Prisons has the sole authority to designate an inmate's place of incarceration. *See United States* v. *Jalili,* 925 F.2d 889,892-93 (6th Cir. 1991). Although a sentencing court may recommend that a defendant be retained at a facility near the place of trial, *see* Rule 38(b), Fed. R. Crim. P., such a recommendation is discretionary and any such request should be directed initially to the sentencing court. *See Levine v. Willingham,* 261 F. Supp. 743, 746 (D. Kan. 1966).

---

2. Because these records were allegedly not available to him at trial and thus were not entered into evidence, they would seem to be more applicable to a motion for a new trial based on newly discovered evidence under Rule 33, Fed. R. Crim. P., rather than basis for attacking his conviction on direct appeal.

Even if this court had authority to act in this matter at this time, the materials presented by the defendant, without more, do not warrant an order preventing a transfer.[3]

It therefore is **ORDERED** that the motion for a stay of execution of sentence or, in the alternative, an order preventing his transfer to another facility is denied.

ENTERED BY ORDER OF THE COURT

/S/ Leonard Green
Clerk

---

3. We also note that such requests are usually based upon a need to confer with appellate counsel. In this case: the defendant has chosen to proceed on appeal pro se and that need is not a factor. Although he claims a need to have access to his business records, it does not appear that a transfer would necessarily foreclose such accessibility.

App. 7

No. 04-5869

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	ORDER
	)	
O'RANE M. CORNISH, SR.,	)	
	)	
Defendant-Appellant.	)	

Before: SILER, CLAY, and ROGERS, Circuit Judges.

O'Rane M. Cornish, Sr., appeals a district court order that denied his motion for a new trial filed under Fed. R. Crim. P. 33. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Following a jury trial in the district court in 2001, Cornish was convicted of wire fraud, seven counts of money laundering, bank fraud, and making a false statement on a loan application in violation of 18 U.S.C. §§ 1343, 1957, 1334 & 1014. Prior to sentencing, Cornish filed an initial Fed. R. Crim. P. 33 motion for a new trial by counsel, citing records favorable to the defense that could not be retrieved

prior to trial. Over six months later, the district court denied Cornish's motion for a new trial because Cornish did not provide exculpatory records in support of his motion. Contemporaneously, the district court sentenced Cornish to 71 months of imprisonment, to be followed by three years of supervised release, and imposed a $550 special assessment and ordered Cornish to pay $427,190.68 restitution. Cornish filed a timely notice of appeal taken from his judgment of conviction and from the district court's order denying his initial motion for a new trial. This court affirmed Cornish's convictions and the district court's order denying his motion for a new trial. *United States* v. *Cornish,* No. 01-6132,2003 WL 21376949 (6th Cir. June 12,2003).

Next, Cornish filed the instant Fed. R. Crim. P. 33 motion for a new trial, again alleging as grounds for relief newly discovered and retrieved exculpatory evidence. Ultimately, the district court denied Cornish's motion for a new trial. Cornish filed a timely notice of appeal.

On appeal, Cornish reiterates his contention that new evidence warrants a new trial, and contends for the first time that his sentence under the United States Sentencing Guidelines was improper. The government responds that the district court did not abuse its discretion in denying Cornish's motion because the cited evidence is "newly available" as opposed to "newly discovered," and because the evidence does not warrant a new trial in any event. Upon review, we affirm the judgment essentially for the reasons stated by the district court in its order denying defendant's motion for new trial filed July 1, 2004.

Generally, this court reviews the denial of a Fed. R. Crim. P. 33 motion only for an abuse of discretion. *United States* v. *Hawkins*, 969 F.2d 169, 175 (6th Cir. 1992); *United States* v. *Seago*, 930 F.2d 482, 488 (6th Cir. 1991). Here, Cornish's motion for a new trial is cognizable only on the basis of newly discovered evidence because it was filed more than seven days after the verdict. However, motions for a new trial under Fed. R. Crim. P. 33 based upon newly discovered evidence are disfavored. *Hawkins*, 969 F.2d at 175 (citing *United States* v. *O'Dell*, 805 F.2d 637, 640 (6th Cir. 1986)). Defendant bears the burden of demonstrating the need for a new trial, and such motions will be granted only sparingly. *Hawkins*, 969 F.2d at 174; *Seago*, 930 F.2d at 488. A motion for a new trial based upon newly discovered evidence should be granted only where: (1) the new evidence was discovered after trial; (2) the evidence could not have been discovered earlier with due diligence; (3) the evidence is material; and (4) the evidence would likely produce an acquittal. *Id.* Evidence which is known to a defendant before trial but was not available at trial is not "newly discovered" and does not warrant a new trial. *See United States v. Turns, 198 F3d 584, 586-88 (6th Cir. 2000); United States v. Glover*, 21 F.3d 133, 138-39 (6th Cir. 1994). In this case, the district court did not abuse its discretion in denying defendant's motion.

First, the district court correctly concluded that Cornish's documentary evidence in support of his motion for a new trial is "newly-available" as opposed to "newly discovered." Accordingly, the district court was within its discretion to deny Cornish's motion for a new trial on this basis alone. Nonetheless, the district court correctly

concluded that Cornish's evidence does not warrant a new trial in any event. Accordingly, the district court did not abuse its discretion in denying defendant's Fed. R. Crim. P. 33 motion on this ground.

Finally, it is noted that any Sixth Amendment sentencing claim Cornish might have is not properly before this court because Cornish did not raise the claim in the district court. *See United States v. Ninety-Three* (93) *Firearms,* 330 F.3d 414, 424 (6th Cir. 2003). Moreover, any Sixth Amendment claim regarding judicial factfinding and application of the United States Sentencing Guidelines under *United States v. Booker,* 125 S. Ct. 738 (2005), is precluded because *Booker* does not apply retroactively to cases on collateral review. *See Humphress v. United States,* 398 F.3d 855, 860 (6th Cir. 2005), *cert. denied,* 74 U.S.L.W. 3207 (U.S. Oct. 3, 2005) (No. 05-5130). Accordingly, Cornish's remaining claim on appeal is meritless.

For the foregoing reasons, the district court's judgment is affirmed. *See* Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/S/ Leonard Green
Clerk

APPENDIX B

DISTRICT COURT ORDER
OF JULY 2004,
NOT AVAILABLE TO CORNISH
AT PRINTING

APPENDIX C

THE "NEWLY AVAILABLE" MUNICIPAL BUILDING PERMITTING DOCUMENTS

App. 12

TALE OF THE NON-EXISTENT BUILDING PERMITS FOR 4730 & 4791-7 TCHULAHOMA RD., MEMPHIS 38118

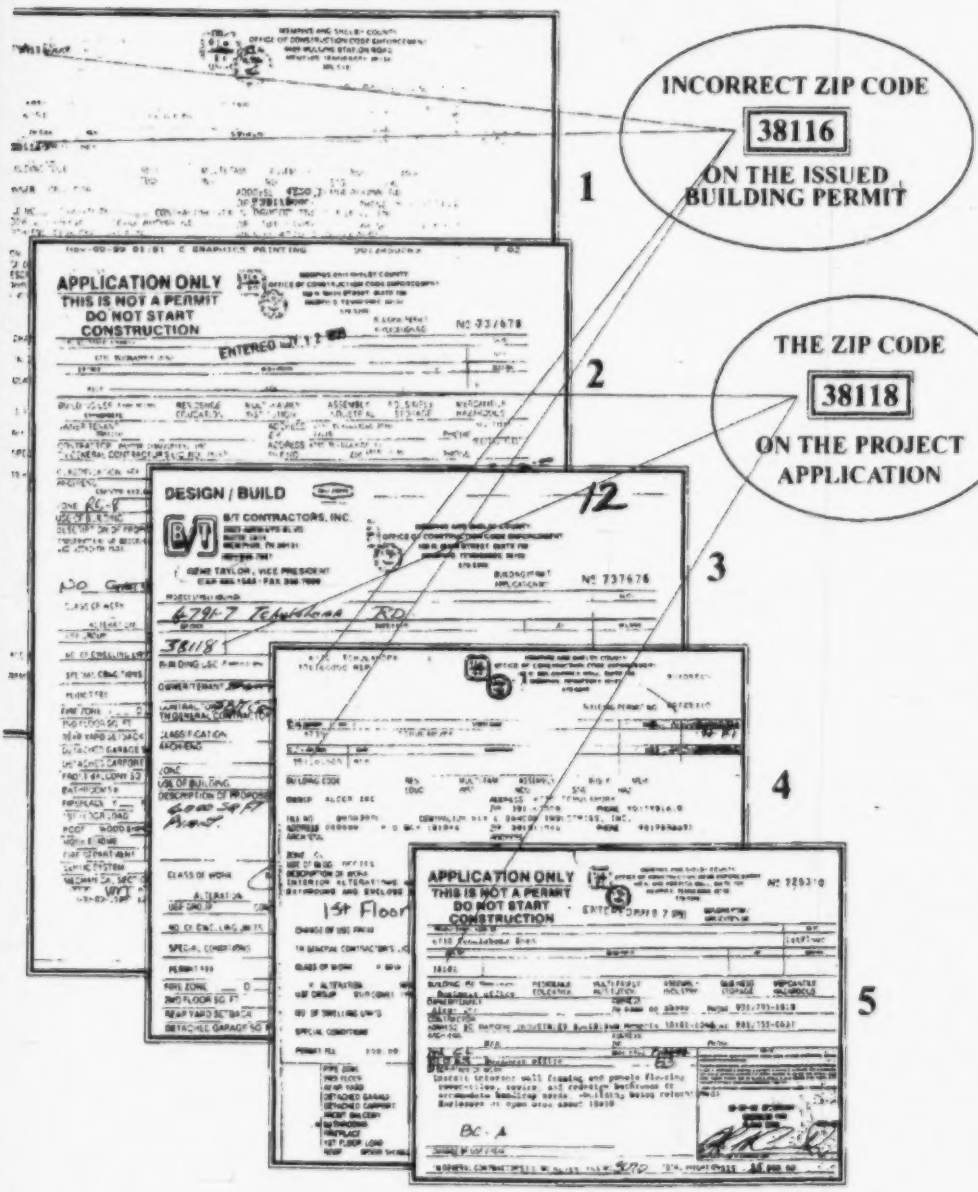


FIG. 1

SUMMARY OF Fig. 1 DOCUMENTS PRESENTATION

Fig. 1 graphically presents the documents witnesses Doris Austin, Deputy Administrator, Memphis & Shelby County Office of Construction Code Enforcement (Code Enforcement), and Brian Burns, FBI, testified didn't exist. There nonexistence, they reasoned and testified, meant that the building at issue could not exist, and that information supplied to the bank was false.

Documents **1, 2, 3** are Applications and Permits for 4791-7 Tchulahoma Road, the building project at issue. **4** and **5** are the Application and Permit for 4730 Tchulahoma Road, which goes to the core of the false information element. THEY WEREN'T AVAILABLE FOR TRIAL:

These five documents at **Fig.1**, exhibit a unique feature which proved to be severely prejudicial to Cornish pre and at trial. Documents **2** and **3** shows the correct address with zip code **38118**. But, Document **1**, show the Permit issued with an incorrect zip code **38116**. The incorrect zip code (38116), prevented access by Code Enforcement itself to the documents, kept Cornish from accessing them, and also the FBI's Brian Burns from access as reflected in his testimony at **RT Vol.IIp252:L7-11; APX ____**. When asked about the existence of permits for Alco[r] at 4730 Tchulahoma Road, Austin, he testified, told him she had none. But, as the documents **4** and **5** shows, the address with the correct zip code 38118 was provided, but Code Enforcement again issued the Permit to the wrong zip code, as shown by Document **4** - the Permit.

The documents arrayed in diffused relational sequence at **Fig. 1**, are among the permit applications, permits and Certificates of Occupancy which have been ruled "newly available" evidence by the U.S. District Court. They disprove the very premise of the prosecution's case and the testimony of its 'ace' witnesses, Austin and Burns. They corroborate defense witnesses Leavette Robinson, Antonio Robinson and others, all eyewitnesses to the construction.

BEST AVAILABLE COPY

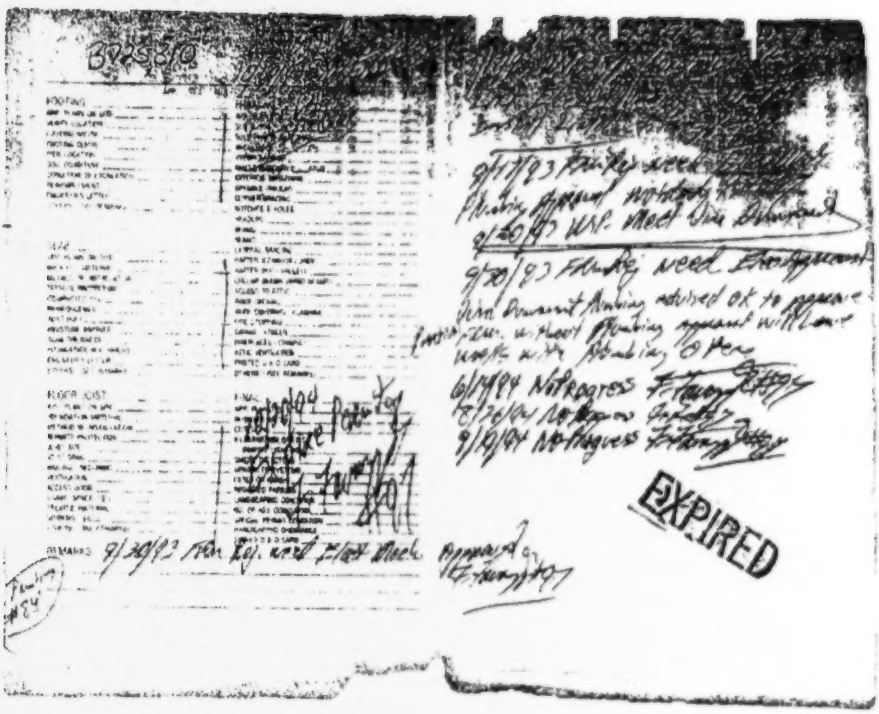


Exhibit #6

"HE WAS NOT ALLOWED TO COMPLETE COMMERCIAL PROJECTS", SAID AUSTIN - FALSELY.

PROSECUTION WITNESS: DORIS AUSTIN ON DIRECT TESTIFIED: RT.Vol.Ip154:L9-15:

. . . . .

Q: Was he allowed to in fact complete those because of his license?

A: No.

Q: So of the four commercial permits he applied for, he was not all allowed to complete any of them; is that correct?

A: No.

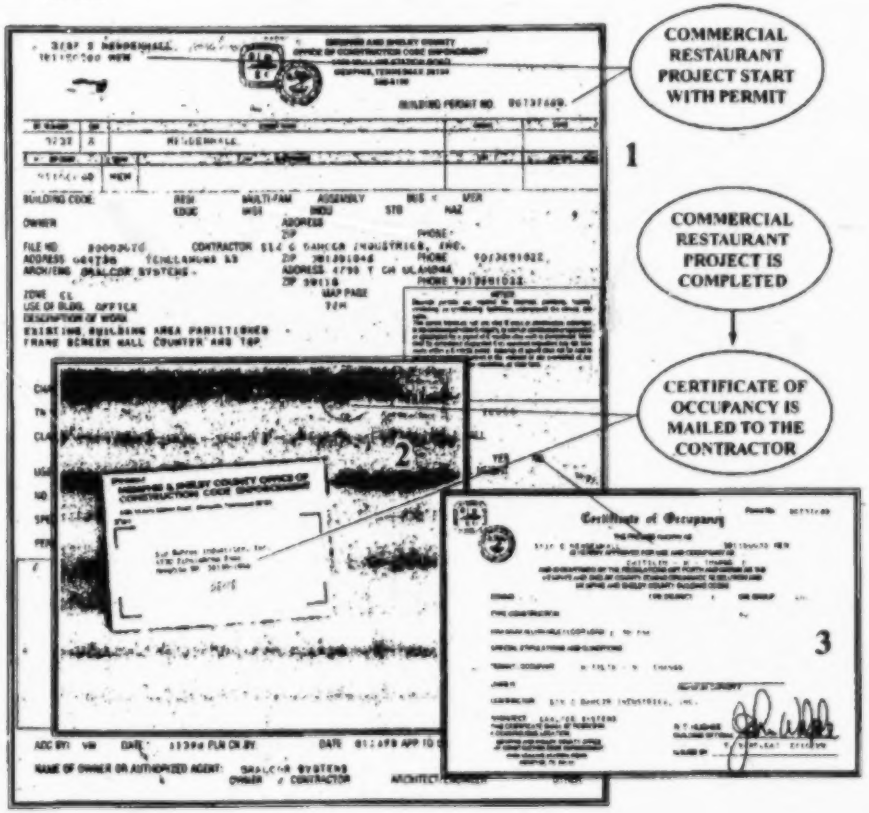


FIG. 2

THESE TWO (FIG. 2 & FIG. 3) "NEWLY AVAILABLE" SERIES OF DOCUMENTS DISPROVES AUSTIN'S TESTIMONY. THEY, ONE A RESTAURANT, THE OTHER AN OFFICE, SHOW PERMI APPLICATIONS, INSPECTION AND CERTIFICATES OF OCCUPANCY. IN MEMPHIS, TN., THE CERTIFICATE OF OCCUPANCY IS CONCLUSIVE PROOF OF SUCCESSFUL COMPLETION OF THE PROJECT(S) FOR WHICH THE PERMITS WERE PULLED. THEY SHOW THAT CORNISH COMPLETED HIS PROJECTS FOR WHICH HE PULLED BUILDING PERMITS. AUSTIN TESTI FIED FALSLEY.

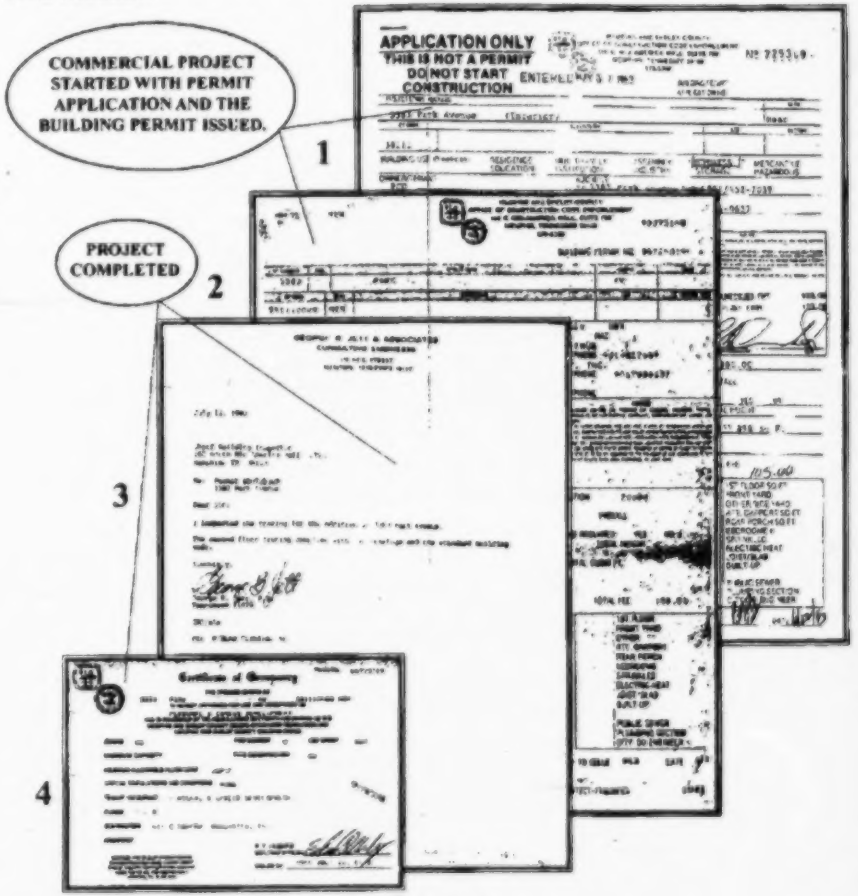
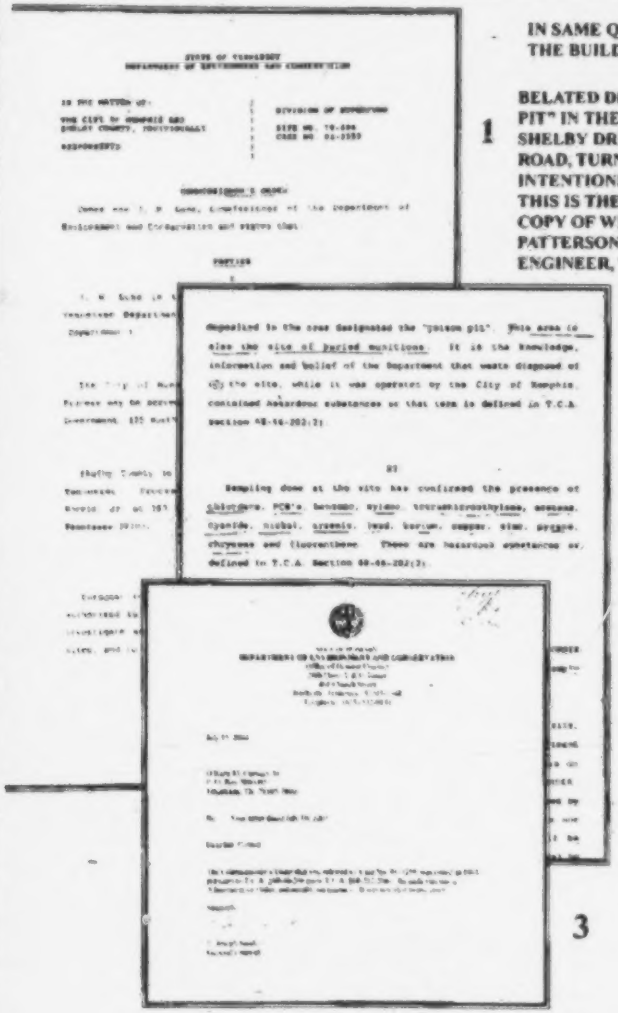


FIG. 3

UNKNOWN ENVIRONMENTAL IMPAIRMENT - "POISON PIT" IN THE MIDST



IN SAME QUADRANT AS THE BUILDING AT ISSUE.

1 BELATED DISCOVERY OF THIS "POISON PIT" IN THE SOUTHWEST QUADRANT OF SHELBY DRIVE AND TCHULAHOMA ROAD, TURNED A GOOD AND WELL INTENTIONED BUILDING PROJECT BAD. THIS IS THE "COMMISSIONER'S ORDER", COPY OF WHICH HE RECEIVED FROM PATTERSON, THE CITY ENVIRONMENTAL ENGINEER, WHEN HE VISITED HIS OFFICE AFTER BEING INFORMED OF THE PROBLEM BY HIS CUSTOMER, MTC. HE IMMEDIATELY DELIVERED THIS COPY TO HIS COUNSEL, CHARLES DICKINSON, DECEASED.

2

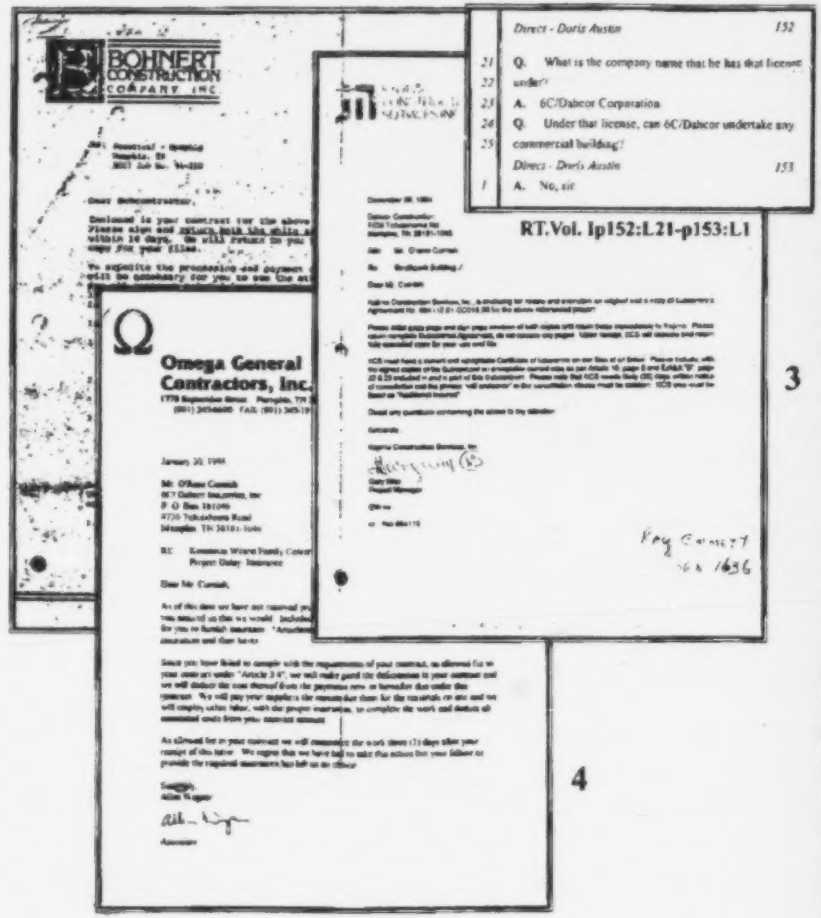
CORNISH'S COPY OF THIS "ORDER" IS AMONG THE "NEWLY AVAILABLE" EVIDENCE. BUT HE COULDN'T WITH DILIGENCE GET A COPY FROM OTHER SOURCES IN THE MEMPHIS / SHELBY COUNTY AREA, BECAUSE, AS SHOWN BY THIS LETTER FROM THE GENERAL COUNSEL, IT WAS NOT FILED IN ANY COURT.

3

FIG. 4

HE COULD DO NO COMMERCIAL CONSTRUCTION, TESTIFIED DORIS AUSTIN

THESE ARE JUST THREE OF THE COMMERCIAL CONSTRUCTION UNDERTAKEN BY CORNISH AND HIS COMPANY. THEY DISPROVE AUSTIN'S TESTIMONY IN ABSOLUTE TERMS.



2

Direct - Doris Austin 152

21 Q. What is the company name that he has that license under?
22 A. 6C/Dalcor Corporation.
23 Q. Under that license, can 6C/Dalcor undertake any
24 commercial building?
25

Direct - Doris Austin 153

1 A. No, sir.

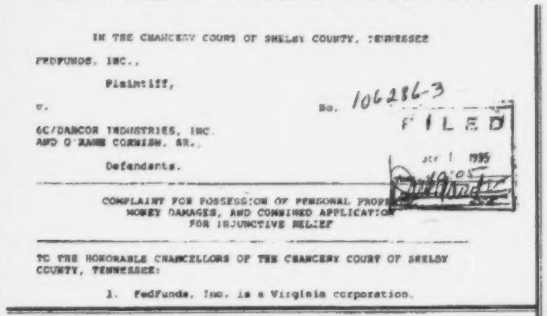
RT.Vol. Ip152:L21-p153:L1

3

4

FIG. 5

A DISPLAY OF A SERIES OF LIES AND DECEPTION BY PROSECUTION WITNESS BEALE: FIRST HE LIES AND DECEIVES THE CHANCERY COURT.



IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

FEDFUNDS, INC.,

Plaintiff,

v. No. 106286-3

FILED

6C/DANCOR INDUSTRIES, INC. AND O'KANE CORNISH, SR.,

Defendants.

COMPLAINT FOR POSSESSION OF PERSONAL PROPERTY, MONEY DAMAGES, AND COMBINED APPLICATION FOR INJUNCTIVE RELIEF

TO THE HONORABLE CHANCELLORS OF THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE:

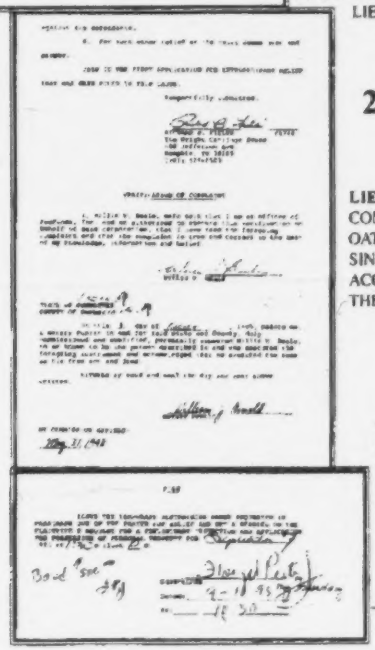
1. FedFunds, Inc. is a Virginia corporation.

NOTE SWORN VERIFICATION BELOW.

1

LIE #1
BEALE, A PROSECUTION ACE WITNESS LIED IN HIS VERY FIRST AVERMENT TO THE CHANCERY COURT

RULE: LIE TO ONE COURT; LIE TO ALL COURTS.



2

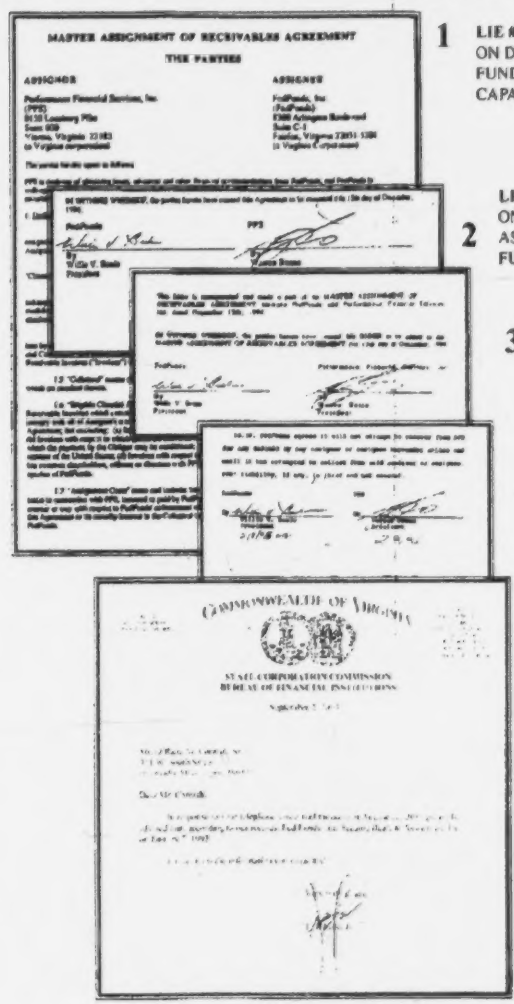
LIE #2
COMPLAINT VERIFICATION IS UNDER OATH. BUT, IT IS A LIE UNDER OATH, SINCE HIS FIRST AVERMENT IS A LIE ACCORCING TO THE RECORDS OF THE COMMONWEALTH OF VIRGINIA

THE DECEPTION:
BEALE'S LIE GAVE HIM WHAT HE SOUGHT - THE TEMPORARY RESTRAINING ORDER. IT IS OBTAINED BY OUTRIGHT DECEPTION.

3

FIG. 6

PRESENTATION OF THIS DOCUMENT TO THE TRIERS OF FACT, LIES AND MORE LIES; BECAUSE PARTY OF 2ND PART, FED FUNDS, INC., DID NOT EXIST AT IT'S INCEPTION.



MASTER ASSIGNMENT OF RECEIVABLES AGREEMENT

THE PARTIES

ASSIGNOR

ASSIGNEE

1

LIE #3
ON DATE OF THE TRANSACTION AT ISSUE, FED FUNDS, INC. DIDN'T EXIST, OR POSSESSED CAPACITY TO ENTER CONTRACTS, ETC.

2

LIE #4
ON DATE OF EXECUTION OF THE MASTER ASSIGNMENT AGREEMENT, 12/13/94, FED FUNDS, INC. DIDN'T EXIST.

3

4

LIE #5
ON DATE OF THE 2ND EXECUTION OF THE MASTER ASSIGNMENT AGREEMENT, 2/8-9/95, FED FUNDS, INC. DID NOT EXIST AS AT JANUARY 7, 1993

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION
BUREAU OF FINANCIAL INSTITUTIONS

CONFIRMATION
LETTER FROM THE COMMONWEALTH OF VIRGINIA CONFIRM THAT AS AT 1/7/93, FED FUNDS, INC. DID NOT EXIST.

5

FIG. 7

App. 20

THE LYING CONTINUES BUT AT THE DISTRICT COURT

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION
BUREAU OF FINANCIAL INSTITUTIONS

August 11, 2003

Mr. O'Rane M. Cornish, Sr.
214 W. South Street
Hernando, Mississippi 38632

Dear Mr. Cornish:

I have your letter dated July 28, 2003 and received August about two firms supposedly operating or having operated in Vir Financial Services, Inc. and Fed Funds, Inc.

My staff has checked our records and I offer the following Financial Services, Inc. was formerly registered as a business in V defunct. The company listed its address as 9150 Leesburg Pike, Virginia 22812. Its registered agent was J. Michael Slocum, 6225 Brandon Avenue, Suite 310, Springfield, Virginia 22150. The President of the company was Mr. Warren J Rosen.

Second, Fed Funds, Inc. was registered as a business in Virginia, but apparently changed its name to Beale and Associates, 6011 Malta Lane, McLean, Virginia 22101 Its registered agent and President is Willis V. Beale, of the same address.

Neither of these companies have ever been chartered or licensed as a banking institution by the State Corporation Commission, Commonwealth of Virginia.

I hope this is helpful.

Very truly yours,

LIE #6
COMPARE HIS DIRECT TESTIMONY AT **RT Vol.Ip91:L24-25 INSERTED, WITH** LETTER FROM COMMONWEALTH OF VIRGINIA

91

Direct - Willis Beale

Willis Beale,

20 A. I was the president of Fed Funds
21 Q. Tell us what Fed Funds does.
22 A. Fed Funds was a company that was established to
23 finance companies that were involved in the factoring
24 business. In the simplest form we were basically a
25 bank.

2

HIS TESTIMONY THAT FED FUNDS WAS A BANK IS FALSE. HE LIED.

3

FIG. 8

App. 21

WARREN ROSEN IS BEALE'S PARTNER AND AN ACE PROSECUTION WITNESS. HE MORPHED INTO THINGS HE WAS NOT, WITH CAPABILITIES HE NEVER POSSESSED, AFTER HE FOUND OUT MUCH ABOUT CORNISH AND HIS COMPANY FROM #4 & 5 DOCUMENTS BELOW.

Cross - Warren Rosen

5 Q. Isn't it true that Mr. Schaner had told you that
6 Mr. Cornish didn't want to deal with any brokers?
7 A. I don't recall that he said that.

1

HE DENIED RECOLLECTION OF COMMUNICATION ABOUT CORNISH'S AVERSION TO BROKERS.

FAX COVER SHEET
From
DEAL CONSULTANTS
112 ENGLISH ROSES COURT
STONE MOUNTAIN, GEORGIA 30088 USA
404-440-9849 FAX 404-939-9395

TO: Performance Financial Services, Inc.
ATTN: Tyler Fielding
NUMBER OF PAGES: 3 (including this cover page)
FROM: Ed Schaner
RE: DEH GC/Delmore
DATE: 6-28-95

Here is the information I have on this client. This can also not work through a broker arrangement, but I think that he can be a good client for you. He is currently bidding on a VA project.

I am not going to be able to get on my normal capacity as owner with the client, so for us there must be ten up.

Thank you.

Edward Schaner

4

WITH 4 & 5 HE MORPHED INTO THINGS HE WAS NOT WITH CAPABILITIES HE NEVER HAD IN THIS LETTER TO CORNISH.

FAX COVER SHEET
From
ATLANTA FUNDING CORPORATION
3340 Peachtree Road, The Towers, Suite 1800
Atlanta, Georgia 30326
404-953-1599 FAX 404-498 9401

TO: GAC
ATTN: Mike Freund
NUMBER OF PAGES: 7 (including this cover page)
FROM: Ed Schaner
RE: GC/Delmore Industries, Inc
DATE 2-2-95

Here is the FAX on the construction company in Memphis that I was talking to you about the other day. They have been burned by a couple of bad brokers and are really gun shy.

Thank you.

Ed Schaner

5

Performance Financial Services, Inc.

6

THE LETTER FROMTHE USDOC SHOWS ROSEN TO HAVE LIED REPEATEDLY TO CORNISH IN HIS LETTER. SHOW HIM A FAKER.

Rec'd 8/4/03

July 30, 2003

O'Rane M. Cornish, Sr.
214 W. South Street
Hernando, MS 38632

Dear Sir:

We received your request for the verification/confirmation and information regarding Performance Financial Services. Note that all requests for documents must be handled under the Freedom of Information Act (FOIA). You may obtain information at http://www.doc.gov/ocpa/FOIA/foiaer.htm. Nevertheless, given the agency's effort in lieu of ongoing services to the public, the Minority Business Development Agency (MBDA) conducted a quick review of its files in order to respond to your request.

The letter confirms that we were unable to locate the execution of a cooperative working agreement between MBDA of the U.S. Department of Commerce and Performance Financial Services, Inc. dated February 14th or at any other time.

Sincerely,

Monica Eaton
Chief Counsel
Minority Business Development Agency
U.S. Department of Commerce

7

FIG. 9

THOSE WHO BRAZENLY RESORT TO DECEPTION, ALSO ALTER DOCUMENTS. ROSEN PROVIDED THE DOCUMENT 8(A) BELOW - WITH CORNISH'S DISCLOSURE DELETED! THE "NEWLY AVAILABLE" DOCUMENT (8) SHOWS THE DISCLOSURE AS CORNISH ORIGINALLY PROVIDED ROSEN.

1

Direct - Warren Rosen

BUT AL TOWNSEND IS NOT SAME AS: A.S. TOWNSEND

Q. Was this again attested to purportedly by some secretary of the corporation?
A. Yes, again, the same signature of Al Townsend
Q. Al Townsend.
-MR. DISCENZA: IF Your Honor please, I would ask this be marked and moved into evidence as the government's exhibit.

8

IN WITNESS WHEREOF, this Guaranty has been duly sealed, executed and delivered by the undersigned this 23 day of April, 1991.

AC/Dahcor Industries, Inc.
A Tennessee Corporation
(CORPORATE SEAL)
BY:
NAME: O'Bane M. Cornish, Sr.
TITLE: Chief Operations Officer
ATTEST:
(Assistant) Secretary

BY:
NAME: O'Bane M. Cornish, Sr.
Individually

SUBSCRIBED and SWORN to before me this 23rd day of April, 1991.
Notary Public
Comm Exp 7-13-93

Page 3 of 3

Dear Sue: I am positive I told Tonda you that I had received those funds and the file [illegible] Sue Gore, Comptroller Dept. 1st Tenn. Bank Box 1707 [illegible] Memphis, TN 38101 Re: Account #[illegible] Regulatory Environmental Consultants with [illegible] Regulatory Environmental Consultants, Inc. Please fix [illegible] Thank you and let me know if I need to do anything else. Thanks for your help. Sincerely, Bane

- THE DOCUMENT ROSEN PRESENTED THE COURT

8(A)

IN WITNESS WHEREOF, this Guaranty has been duly sealed, executed and delivered by the undersigned this 23 day of April, 1991.

AC/Dahcor Industries, Inc.
A Tennessee Corporation
(CORPORATE SEAL)
BY:
NAME: O'Bane M. Cornish, Sr.
TITLE: Chief Operations Officer
ATTEST:
(Assistant) Secretary

BY:
NAME: O'Bane M. Cornish, Sr.
Individually

SUBSCRIBED and SWORN to before me this 23rd day of April, 1991.
Notary Public
Comm Exp 7-13-93

ROSEN IS ASKED IF CORNISH TOLD HIM THAT HE (CORNISH) HAD WORKED WITH AND FOR MTC BEFORE. HE TESTIFIED "NO" BUT THE "NEWLY AVAILABLE" DOCUMENT ABOVE SHOWS THAT HE WAS SO INFORMED IN WRITING. BUT, IT IS DELETED FROM 8(A) DOCUMENT AT LEFT.

Cross - Warren Rosen

2

Q. Did Mr. Cornish tell you that he had worked for Manufacturing Technologies for a number of years?
A. No.
Q. He had done work for them before?
A. No, he did not.

FIG. 10

IT IS NOT ONLY ROSEN, BEALE, AUSTIN AND BURNS WHO, AS THE FOREGOING SHOWS, TESTIFIED FALSELY; WILLIAM SCOTT VAUGHT ALSO TESTIFIED FALSELY/MISTAKENLY AS THE DOCUMENTS BELOW REVEAL. THEY ALSO CORROBORATE CORNISH'S DISCLOSURE

1

SECOND NOTICE

Mr. O'Bane M. Cornish
Suite 101, 3595 Regal Blvd.
Memphis, Tennessee 38118

Re: Suite No. 101
3595 Regal Blvd.

Dear Cornish:

My records indicate that the rent on 100 share Acetic Acid Incorporated is delinquent for the following period: August 1986.

The second check for the said dues in the sum of which is still outstanding.

The amount due is $187.50. As per the rent clause under the paragraph 18 of your lease agreement that "...the lessee shall be in violation of declaring this lease terminated and have the right to collect from the lessee the entire unpaid balance for the remainder of the term."

Sincerely,

J. Edward Vaught, II

JEV:lll:km

cc: Mr. C. J. Vaught, President, Great Southern Corporation

2

Mr. O'Bane M. Cornish
Suite 101
3595 Regal Boulevard
Memphis, Tennessee 38118

Re: Suite No. 101, 3595 Regal Boulevard

Dear Mr. Cornish:

My records reflect that in spite of the fact that repeated attempts have been made to rectify this account brought up to date, the rent on the above mentioned property is delinquent for the two months of October and November 1986.

In the event you cannot find means to rectify this matter without the payment of rent, the total rent and interest due as of 5 May 1987 will be in the amount of $950.00 as established on the enclosure. In that event tenancy will be changed so that amount plus other back charges as court costs, attorney's fees and interest's fees. Deadline to be reached must make every effort to effect such damages wherever possible.

In the meantime inasmuch as the premises have not been vacated to a period of two months, your personal property will be seized at that time in order that an attempt to lease elsewhere may be made.

Sincerely,

J. Edward Vaught, II

JEV:lll:km
Enclosure

cc: Mr. C. J. Vaught, President, Great Southern Corporation
Mr. Cornish, 4784 Airline, Memphis, Tennessee 38118
Mr. Cornish, P. O. Box 24243, Memphis, Tennessee 38124-0243

(over)

FALSITY THE COURT RELIED ON:
William Scott Vaught testified that he conducted business as Great Southern Corporation at **3595 Regal** in Memphis; that he had been at that location since **1973**; had never heard of Cornish, his company and his customer, MTC.

a) These two documents are dated 26 August **1986** and 17 November **1986**.
b) They are addressed to Cornish.
c) They refer to and are about the lease for **3595 Regal** [Boulevard], Memphis.
d) They both show that copy of each was sent to **Mr. C. J. Vaught, President, Great Southern Corporation.**
e) Both these documents corroborate the **Fig. 10** document on the opposite page hereto, which shows Cornish's penned **notice** to Rosen/PFS as to his previous relations with his customer, MTC. If Cornish had these documents at trial, would the testimony of William Scott Vaught have been impeached? It would. Now, that they are "newly available", they disprove his testimony.

FIG. 11

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